53

Department of Banking and Finance

2990 Brandywine Road, Suite 200
Atlanta, Georgia 30341-5565
770-986-1633
www.gadbf.org

Sonny Perdue
Governor

David G. Sorrell
Commissioner

September 27, 2005

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Re: Comments on Proposed Rule Part 741.8 and Part 741.3

Dear Ms. Rupp:

The Georgia Department of Banking and Finance appreciates the opportunity to comment on the proposed rule changes to Part 741.8 and Part 741.3. The Department believes the dual chartering system has worked effectively in the past to provide diversity between state and federal charters within the confines of safety and soundness. We are profoundly concerned with efforts which appear designed to limit choice between chartering alternatives.

Part 741.8 Purchase of assets and assumption of liabilities

The Department has concerns regarding these provisions as proposed. In our state, we have requirements that participations purchased by credit unions be purchased from financial institutions with federal deposit insurance. We believe this requirement has provided for safety and soundness while maintaining flexibility for our credit unions. The procedures being proposed by the NCUA would add to the administrative burden of credit unions and is not, in our opinion, necessary based on our examination and supervision of state-chartered credit unions in Georgia. We respectfully request this language be modified to specify that NCUA approval will not be required as long as loan participations are purchased from financial institutions that are insured by federal deposit insurance.

We strive to maintain a balanced approach between regulatory requirements between banks and credit unions. The proposed requirements would place additional and duplicative federal regulatory burdens upon credit unions that currently do not apply to state-chartered banks and thrifts.

Request for comments on Part 741.3

NCUA also seeks comments on nonconforming investments and reserve requirements for federally insured state-chartered credit unions and on extension of certain CUSO rules to state-chartered credit union CUSOs. Specifically, NCUA proposes eliminating the special reserve requirement for non-conforming investments and limiting federally insured state-chartered credit unions to investment grade

investments. NCUA also proposes extending Parts 712.3 and 712.4 of NCUA's CUSO rule to state-chartered federally insured credit unions.

NCUA's proposals to revise investment and CUSO rules for state-chartered federally insured credit unions, set aside longstanding state authority in these areas, is unsupported by any specific evidence of material risk to the insurance fund or undue safety and soundness concerns raised by the current regulatory and statutory separation of state and federal authority. This would weaken the dual chartering system.

Our statutes do not permit investment in sub investment quality investments and require credit unions to divest of any investment that deteriorates to a sub investment status within a reasonable period. We do, however, periodically have requests from credit unions to invest in certain investments which may be unrated due to the size or specialized nature of these investments. The Department is concerned that NCUA appears to be attempting to replace the decision making of the state chartering authority with its own. These issues have been handled effectively on a long-standing basis by the state chartering authorities. Part 741.3(a) (2) acknowledges state authority, expressly noting the ability of state credit unions to invest pursuant to state law and requiring establishment of a special reserve. Are there any examples where this authority at the State level has resulted in any losses to the NCUSIF?

The NCUA proposal cites a lack of compliance with GAAP as a reason for the proposed change. Simply conforming to GAAP in itself isn't a compelling justification for the change. In many cases, the use of reserves to offset the non-conforming investment may be more conservative than GAAP. The use of regulatory accepted accounting principles (RAAP) should be allowed to continue.

NCUA cites unspecified safety and soundness concerns as a reason for the proposed change in investment authority. The proper threshold for NCUA regulation of federally insured state-chartered credit unions should be mitigation of material risk to the insurance fund. In the absence of compelling and specific evidence of material risk, which has yet to be provided to the state regulatory authorities, states should retain statutory and regulatory authority over their state-chartered institutions.

We also note that the FDIC and FRB defer to the states regarding investments that state-chartered banks can make. This has provided for balance between authorized investment activities and safety and soundness in support of a dynamic dual chartering system.

The proper balance between insurance regulation and chartering regulation is reflected in the current provisions of Part 741.3, with states determining investment authority and the federal insurance regulator requiring a reserve for non-conforming investments.

State-chartered CUSO authority has traditionally been derived from state law and regulation. Currently NCUA's Part 703, Investments and Deposit Accounts, and Part 712, Credit Union Service Organizations, apply only to federal credit unions. Before NCUA proposes to preempt state law and regulation, the agency should set forth compelling reasons for the rule making.

NCUA's proposal to extend Parts 712.3 and 712.4 to federally insured state-chartered credit unions and their CUSO relationships raises similar concerns about federal preemption of state authority.

The Department agrees, as do most state regulators, that corporate separateness between a CUSO and its credit union owners is good corporate governance. Requiring corporate separateness as defined by Part 712.4 is not foreign to state law and regulation. We have worked cooperatively with the NCUA to make certain this occurs in practice. However, to preempt state law over CUSO regulation by broad stroke is not supported by any showing of material risk to the insurance fund. NCUA should work with NASCUS and state regulators to increase state emphasis on separateness issues in credit unions if a specific problem has been identified. NCUA's proposed application of Part 712.3 to federally insured state-chartered credit unions and their CUSOs is unsupported by identifiable material risks to the insurance fund.

I want to reiterate the importance of maintaining a dynamic and innovative dual chartering system and want to discourage what appears to be an effort to homogenize the federal and state charters. Provided that a proper balance is maintained between diversity and safety and soundness, the unique characteristics of state-chartered credit unions and the authority of state chartering authorities should be maintained.

The Department appreciates the opportunity to comment on the NCUA's proposed Rule-making and encourages further dialog between the NCUA and state regulators regarding the issues above. The Department has a long-standing position in support of safety and soundness regarding our regulated financial institutions and wishes to maintain our positive and cooperative relationship with the NCUA.

If there are any questions regarding these comments, please free to contact me at 770-986-1629.

Sincerely,

George A. Reynolds

George A. Reynolds, CFE, CPA CEM
Senior Deputy Commissioner
Georgia Department of Banking and Finance